

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: AUTOMOTIVE PARTS

## ANTITRUST LITIGATION

Case No. 12-02311

Hon. Marianne O. Battani

THIS DOCUMENT RELATES TO:

## END-PAYOR ACTIONS

## FAIRNESS HEARING

BEFORE THE HONORABLE MARIANNE O. BATTANI  
United States District Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan  
Wednesday, August 1, 2018

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19 presenting before the Court, not to be representative of  
20 all attorneys present.)21  
22  
23  
24  
25

1	<u>TABLE OF CONTENTS</u>	
2		<u>Page</u>
3	Fairness Hearing.....	3
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
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1      Detroit, Michigan

2      Wednesday, August 1, 2018

3      at about 10:13 a.m.

4                    - - -

5                    (Court and Counsel present.)

6                    THE LAW CLERK: All rise.

7                    The United States District Court for the Eastern  
8                    District of Michigan is now in session. The Honorable  
9                    Marianne O. Battani presiding.

10                  You may be seated.

11                  THE COURT: I can't get used to this perspective.

12                  Good morning.

13                  THE ATTORNEYS: (Collectively) Good morning, Your  
14                  Honor.

15                  THE COURT: Excuse me just one minute. All right.  
16                  We have two motions today, and the first motion is the  
17                  end-payors' motion for final approval of a settlement. And  
18                  who is --

19                  MR. SELTZER: Your Honor, if it please the Court,  
20                  Mark Seltzer for the end-payor plaintiffs for the  
21                  presentation.

22                  THE COURT: Could you come to the podium,  
23                  Mr. Seltzer?

24                  MR. SELTZER: Thank you, Your Honor.

25                  THE COURT: I think we should get who's in court

1 first. Let's get the appearances of everybody who's going to  
2 be participating in this motion. Anybody else here on that  
3 side?

4 (No response.)

5 THE COURT: Over here.

6 MR. RUBIN: Mike Rubin for the Yamasha defendants,  
7 Your Honor. I'm not sure if we are going to be participating  
8 in the motion for the final approval of the settlement, but  
9 on the judgment issue we will have something to say.

10 THE COURT: Okay.

11 MR. SELTZER: All right. Your Honor, if I may,  
12 first of all, before I begin my remarks I want to note for  
13 the record that there was one objection that was filed with  
14 respect to two settlements in the spark plugs case.

15 THE COURT REPORTER: Could you speak up, please.

16 MR. SELTZER: Yes. There was one objection filed  
17 with respect to the two settlements in the spark plugs case,  
18 that was by Ms. Ahern, and this morning that objection was  
19 withdrawn with prejudice without costs, so there are no  
20 pending objections to any of the settlements in this round  
21 three of the end-payor settlements.

22 THE COURT: Okay. So there are no pending -- I was  
23 going to say I didn't see anything. No other objections?

24 MR. SELTZER: No other objections. That was the  
25 only one that was filed, and that has now been withdrawn.

1                   THE COURT: Okay.

2                   MR. SELTZER: And, Your Honor, now --

3                   THE COURT: We have the GEICO issue.

4                   MR. SELTZER: Right, we have the GEICO issue, which  
5                   is a separate question relating to the timing of the entry of  
6                   the final judgments, but we can address that at the end.

7                   Let me begin by saying this is an important  
8                   milestone in the history of this case. The settlements that  
9                   have been achieved in this litigation are really historic in  
10                   nature. And Your Honor has presided over one of the most  
11                   complex, if not the most complex set of antitrust class  
12                   action cases ever filed in the United States, and I say that  
13                   speaking from 45 years of experience in litigating these  
14                   kinds of cases.

15                   The case involves scores of defendants across the  
16                   globe who are alleged to have colluded on the pricing of  
17                   component parts of automobiles over many years, and it  
18                   affected purchasers down a long chain of distribution. So  
19                   it's a case that has presented many complexities both legally  
20                   and factually.

21                   And I'm very pleased to report, I think we are  
22                   nearing or on the verge of nearing the end of this  
23                   litigation. There are only a handful of settlements --  
24                   non-settling defendants left in the case. We are working at  
25                   arriving at settlements with them. It's possible that we may

1 not achieve that result with respect to --

2 THE COURT: I'm sorry. We're having a little  
3 computer difficulty here.

4 MR. SELTZER: Very well, Your Honor. It's possible  
5 we may not achieve settlements with all of them, in which  
6 case we will have to litigate to a conclusion, but I remain  
7 optimistic that at the end of the day, we will. And the  
8 Settlement Master, Judge Weinstein, and his team, have been  
9 actively engaged in conducting and mediating settlements, and  
10 we have also engaged in bilateral discussions with some of  
11 the defendants, so we are moving ahead to try to resolve the  
12 rest of the case as well.

13 Now, the settlements that have been reached in this  
14 case, including ones that are not included in the third round  
15 but have been publicly announced, now total \$1.84 billion --  
16 that's \$1.084 billion.

17 THE COURT: That's 1.0 --

18 MR. SELTZER: 1.084.

19 THE COURT: Including this, as I read this --

20 MR. SELTZER: Including this one, yes, yes. And  
21 this third round is the largest of the rounds we have  
22 achieved so far. The settlement amounts are approximately  
23 \$433 million.

24 Now, our papers describe in detail the reasons why  
25 we believe the settlements are fair, reasonable and adequate

1 to the classes. And I think it's important to recognize that  
2 the settlements also provide for important nonmonetary  
3 benefits. Over and above the tremendous economic monetary  
4 recovery, the settlements all provided for discovery  
5 cooperation, and that discovery cooperation was extremely  
6 helpful to us in bringing other defendants to the negotiating  
7 table and negotiating settlements because we were able to get  
8 information from the cooperating defendants about the who,  
9 what, where and when participation in the conspiracies, and  
10 getting detail like that was very helpful in terms of  
11 persuading the non-settling defendants to come to the table.

12 The settlements meet every test under Rule 23, and  
13 so does the plan of allocation as well. The Court in its  
14 order, approving the round two settlements that was entered  
15 on July 10th of last year, went through all of the factors.  
16 I don't think I need to go through all of them again here,  
17 but they apply with equal, if not greater force to these  
18 settlements.

19 The settlements were the subject of a very  
20 extensive notice program. We submitted the declarations of  
21 the claims administrator that describes the basis of the  
22 notice.

23 THE COURT: I have a question on the notice.

24 MR. SELTZER: Yes.

25 THE COURT: This may not be the time to ask it, but

1 tell me again how many people actually filed claims. I  
2 thought it was like 35,000 or something.

3 MR. SELTZER: There have been more than 100,000 who  
4 have filed claims or registered with the claims  
5 administrator, and that's set forth in the declaration of  
6 Brian Pinkerton.

7 THE COURT: That have registered. What was that  
8 35,000 number?

9 MR. SELTZER: There were earlier numbers in terms  
10 of who submitted claims and who submitted registrations, and  
11 it has been progressing along, and there were 35,000 in one  
12 stage of the case in response to one of the notices, but the  
13 total now is more than 100,000. And that's --

14 THE COURT: I question that because -- well, maybe  
15 you're going to tell me this only because -- I mean, we are  
16 into the millions of people who could file claims, so even  
17 though that's a very large number, it does not seem to be  
18 significant in comparison to the body of those who may file.

19 MR. SELTZER: Well, here's the reason why that  
20 number is likely to increase. The Court has not yet set a  
21 claim submission deadline, and in our experience that  
22 deadline is something that focuses the attention of class  
23 members because they know they have to submit a claim in  
24 order to participate by that deadline. I was going to get to  
25 the claims deadline in a bit but --

1                   THE COURT: You can wait until you get to it, I was  
2 just was -- those numbers just didn't ring well with me and I  
3 wanted to ask you about that.

4                   MR. SELTZER: Right.

5                   THE COURT: But I thought the claims would be a  
6 period when you may get more.

7                   MR. SELTZER: Right, and we also intend to engage  
8 in a very extensive additional outreach at the time that the  
9 claims deadline is set in order to encourage as many people  
10 as possible who are eligible to submit claims.

11                  But one thing I want to emphasize about these  
12 settlements, these are non-reversionary settlements. Whoever  
13 claims, and whoever has claims that are approved by the  
14 Court, will share pro rata in the settlement funds. So all  
15 the money that has been put up by the settling defendants  
16 will go to class members. If class members for some reason  
17 don't submit a claim then that's their choice, but those who  
18 do and who have valid claims will share pro rata in the  
19 settlement funds, so it will all be distributed to class  
20 members. Some of them may get very, very substantial  
21 payments if other class members don't file claims who are  
22 eligible to do so, and that's something that's not an unusual  
23 occurrence in class action cases.

24                  One of the cases that I was involved in in the last  
25 several years involved the automobile company Toyota,

1 involving the unintended acceleration problem that Toyota  
2 had. And there we had also a very extensive class notice  
3 program, and class members would be entitled to receive  
4 payments up to \$10,000. You would think that would encourage  
5 people to file claims; still the turnout was less than we  
6 hoped for in terms of the settlement, so we engaged in  
7 additional outreach to increase the number of people who  
8 submit claims. Ultimately the settlement funds were all paid  
9 out to class members.

10 So that kind of occurrence is something that is not  
11 unusual in these cases. It is a phenomena that is not unique  
12 to this case but, as I say, the claims deadline will likely  
13 result in a spike in claims because that's the history of how  
14 claims are submitted, and as well we intend to engage in an  
15 outreach program to encourage as many people as possible to  
16 submit claims.

17 THE COURT: Tell me, just out of curiosity in terms  
18 of that claims process, the ultimate distribution would be  
19 when the non-settling defendants have either tried or been  
20 resolved?

21 MR. SELTZER: Well, here's -- let me leap ahead to  
22 that subject because we --

23 THE COURT: I'm sorry. I'm just curious.

24 MR. SELTZER: No, no. Here's what we were going to  
25 propose to the Court regarding the claims deadline. If there

1      had been an objection to the round three settlements that was  
2      not promptly resolved, we were going to ask that the Court  
3      set a deadline in the next few months so that payments could  
4      be paid out of the round one and two settlements, and then  
5      that would also establish a deadline with respect to those  
6      settlements and thereby raise a number of class members  
7      submitting claims.

8              However, because we've now seen the objection go  
9      away with the dismissal this morning of the objection, our  
10     plan is to ask the Court to set a deadline after we submit an  
11     additional round of settlements, be it a fourth round of the  
12     new settlements we have achieved, so we would have a combined  
13     notice that would include those settlements as well as  
14     establishing the claims deadline.

15              The reason for doing that is first and foremost to  
16     avoid complexity in the claim process. The classes all  
17     overlap, and if you establish a deadline at time X with  
18     respect to certain of the settlements, class members who have  
19     a claim in a later case may not submit a claim with respect  
20     to the first group of settlements. We want to encourage as  
21     many people to file claims who have claims against each of  
22     the settling defendants.

23              And as the Court knows, the case is divided up into  
24     settlement classes for each settlement, so you have multiple  
25     settlement classes for a single part and you have other

1 settlement classes for other parts all involving overlapping  
2 and sometimes nonoverlapping defendants. So it's a complex  
3 claims administration issue.

4 And our notion was that we also wanted to avoid any  
5 additional expense of giving class notice. That set of  
6 claims deadline there would need to be a separate notice to  
7 the class telling class members now's the time to submit a  
8 claim, here's the deadline, and you must abide by that in  
9 order to have your claim allowed, but if you combine that  
10 notice with the notice of the fourth round, it will save the  
11 extra expense of another notice.

12 And the notice is not inexpensive, you know, it is  
13 running several million dollars per notice in terms of the  
14 cost of publication and the other costs that are incurred in  
15 giving this kind of nationwide notice.

16 So our thought was to present another round of  
17 settlements to Your Honor, it would be the fourth round, and  
18 at that time ask for a claims deadline to be set even if the  
19 case is then not totally resolved. We anticipate that would  
20 happen sometime early next year at the latest.

21 THE COURT: Well, it makes a lot of sense to me to  
22 do it that way, to wait, because, one, I think you could lose  
23 people by going, you know, for a claim after each settlement  
24 except for the diehards, but it doesn't make sense. I --  
25 this isn't a case -- a personal injury-type case where people

1      need the money, et cetera, in order to get health treatment  
2      or something like that, so I have no problem with waiting in  
3      this case at the very minimum until after your next round of  
4      settlements.

5                    MR. SELTZER: Very well, Your Honor, and that's our  
6      intention. So as I've said, we've got other settlements that  
7      we've already arrived at, of about -- if my memory serves me,  
8      about 47 or 48 million in new settlements that have not yet  
9      been presented to the Court, and we are working on others, so  
10     hopefully we will have a package that will be even larger, to  
11     go with that notice which would then go out sometime in the  
12     first of next year.

13                   THE COURT: All right.

14                   MR. SELTZER: Okay. The -- I prepared a whole  
15     bunch of things to say about the objection, but now that it  
16     has been withdrawn, I'm going to skip over all of that  
17     material. Just to say that in our view, for the reasons we  
18     stated in the papers we submitted in response to that  
19     objection, it was completely without merit; all of the  
20     arguments were boilerplate, they really didn't deal with the  
21     facts and circumstances of this very complex litigation, and  
22     we think we were optimistic Your Honor would overrule the  
23     objection in its entirety, but now that it has been  
24     withdrawn, that issue is entirely moot.

25                   THE COURT: And is that objection you talked about

1      this morning, is it formally withdrawn?

2            MR. SELTZER: Yes.

3            THE COURT: Is there a document to that effect?

4            MR. SELTZER: There was an ECF filing this morning  
5 which attached a document withdrawing the objection with  
6 prejudice.

7            THE COURT: Thank you.

8            MR. SELTZER: Now, with respect to the plan of  
9 allocation, I will speak very briefly. That plan is the same  
10 one that was previously approved by the Court with respect to  
11 the round one and the round two settlements, and as I  
12 indicated, it involves a pro rata distribution among class  
13 members based upon buying a vehicle or a replacement part  
14 that fits within the definition of a particular settlement  
15 class. Each class will have a computation made of the claims  
16 that are submitted with respect to that class settlement and  
17 the total of all of the allowed claims with respect to that  
18 settlement, and then you divide the remaining settlement  
19 funds based upon the ratio between the amount of the allowed  
20 claim of a particular class member and all of the allowed  
21 claims with all class members with respect to that settlement  
22 class. And that's -- that was outlined in the class notice  
23 as well as available on the settlement website.

24            The settlement plan does, however, have one  
25 variation. There are certain vehicles that we had evidence

1      from a variety of sources that was specifically targeted by  
2      name with respect to the conspiracies, and as to those  
3      vehicles, we intend to weight them more heavily than others  
4      in terms of determining their pro rata distribution, and that  
5      also was laid out in the plan of allocation, but other than  
6      that it's a pro rata basis.

7                   So on the settlements, I respectfully submit that  
8      they meet all of the criteria here. They were all negotiated  
9      at arm's length, often with the assistance of a very  
10     experienced settlement mediator. They were the product of a  
11     lot of give and take and back and forth. Some of the terms  
12     were heavily negotiated, most particularly the cooperation  
13     terms that I described, and I think they are a remarkable  
14     achievement.

15                  This case now ranks at the very top, if not the  
16      most successful indirect purchaser class action case or set  
17      of cases, then very close to the top. So it is a case of  
18      historic significance in terms of this kind of litigation.

19                  And our cases are also very important in terms of  
20      enforcement tools for the antitrust laws. The government, of  
21      course, brought criminal proceedings against many of these  
22      defendants, not all but many, and in the guilty plea  
23      arrangements for those defendants, it was expressly stated  
24      that the amount that they would pay as fines would not be  
25      based upon the notion of restitution. Instead, the

1 government said they are looking toward these class action  
2 cases as providing the vehicle for restitution. So in a way  
3 this goes hand and glove with the law enforcement purposes of  
4 the antitrust laws to have this kind of class action and to  
5 have it succeed.

6 So I think it has been, again, a remarkable result  
7 thus far, and we are not quite finished yet, although we are  
8 getting close to the finish line -- at least I hope we are.

9 So that's the settlement. If the Court has any  
10 questions about the settlements?

11 THE COURT: No. I have read the documents, and I  
12 have no questions, and I rely heavily on counsel.

13 MR. SELTZER: Very well. We therefore seek a court  
14 order approving the settlements, granting final approval to  
15 the settlements and the plan of allocation. And we would be  
16 pleased to submit a proposed form of order as we did last  
17 time with respect to the round two settlements.

18 THE COURT: Okay. If I have this right, this is --  
19 involves 33 additional defendants with 19 component parts?

20 MR. SELTZER: That's correct, Your Honor.

21 THE COURT: Is that correct?

22 MR. SELTZER: Yes.

23 THE COURT: Okay. And I take it -- I guess I don't  
24 know for sure, but as to the defendants who are settling, are  
25 their representatives here? Everybody's shaking their heads

1       yes.

2                   UNIDENTIFIED ATTORNEY: Generally, yes, Your Honor.

3                   THE COURT: Thank you. I just want to make sure  
4 that this is on the record that all sides are here. I'm not  
5 going to go through all of the settling defendants but  
6 certainly they are listed. I would indicate, too, that they  
7 are listed specifically with their component part and the  
8 amount that the specific defendant is contributing to this  
9 overall settlement.

10                  The Court has reviewed this, and I'm not going to  
11 repeat what I said in round one and round two because this is  
12 really the same standards and the same components. I would  
13 say that the Court does find that the settlement is fair,  
14 reasonable and adequate. And certainly I know the notices  
15 went out, the Court questioned the notices just in terms of  
16 the number of people who have responded, but I read the  
17 notice. It really was very much the same as in round one and  
18 round two, and where it was published.

19                  I think we need to do more with claims when we get  
20 there, I want to say that; we have to do something a little  
21 bit more.

22                  I have one question about that, too. Has social  
23 media been involved -- I don't recall this -- like Facebook  
24 or whatever social media --

25                  MR. SELTZER: Well, I'm hardly the social media

1 guru, Your Honor, but I'm told and I think the declaration  
2 from Mr. Pinkerton lays out all of the steps that were taken  
3 through social media and the internet to have like banner  
4 headlines, so when people go to search on Google, they will  
5 find this case. In fact, if you look up auto parts  
6 settlement on Google you go immediately to the settlement  
7 website. So there is --

8 THE COURT: Yes, I saw that, and I did that.

9 MR. SELTZER: Right.

10 THE COURT: But I just want to make sure the people  
11 have the notice that there is such a case because I obviously  
12 don't read the same publications that were in the notices  
13 because I haven't seen a notice, and I'm kind of inquiring of  
14 folks I know, did you see a notice, and that's what brought  
15 this to my attention.

16 MR. SELTZER: Yes. And the notice, Your Honor --  
17 the notice administrator who, by the way, is very, very  
18 experienced and skilled in class notices, estimated that the  
19 combined program which included internet notice, mailed  
20 notice, e-mailed notice, publication notice, had a reach of  
21 about 80.4 percent of all new vehicle owners and new vehicle  
22 lessees, and that they would have seen a notice of the  
23 settlement an average of 2.9 times. That's an extraordinary  
24 reach that's used, for example, by very sophisticated  
25 advertising companies when they are designing an advertising

1 program. So it's with that kind of use of multiple  
2 techniques of giving notice that we think the notice is more  
3 than adequate.

4 But I think as I mentioned earlier though, when we  
5 set the claims deadline, we intend at that time to engage --  
6 even go over and beyond whatever has been done before to go  
7 the extra mile to encourage as many people as possible to  
8 file claims.

9 THE COURT: All right. And I do find that the  
10 Rule 23 provisions are complied with. Obviously the case is  
11 very complex, and certainly the attorneys who are working on  
12 this case really have to delve into a lot of different  
13 factors in order to resolve it. I'm very pleased with the  
14 progress of the settlements as you have mentioned; though I  
15 say in my naiveté that I said to Mr. Weinstein, you know, six  
16 months, let's get this resolved. You're getting close  
17 though. Okay.

18 Certainly the judgment of counsel, and I have said  
19 this before, that given the complexity of this case the Court  
20 depends on counsel to have the know with all to handle such  
21 complexities, and I find that you've done a marvelous job.  
22 And as I read these settlements, and as I read the pleadings,  
23 and even the allocation notice, I mean, as I went through the  
24 allocation and how they determined the factors and all of  
25 those things, it's amazing, it seems to work, and I commend

1 you for that. And I note that the class members are  
2 apparently quite satisfied with what you are doing, there  
3 having been only one objection that was withdrawn. I was  
4 looking to -- for the objections in this end-payor action,  
5 thinking that we may get a couple, but I'm glad that we  
6 haven't, and I think that shows how well put together this  
7 action is.

8           Certainly the public have benefitted from this --  
9 or will benefit from the resolution of this matter because  
10 the issues are very complex and they are very numerous, and  
11 the agreement takes care of that. I like the idea what you  
12 had before about the nonmonetary benefits, I think that's  
13 very important. And I agree with you from what I have read  
14 that this seems to be a real tool in resolving these cases.  
15 So that was -- that was very good.

16           And certainly we couldn't do these on an individual  
17 basis, and there is this numerosity issue which is great  
18 here. I think we have been talking about that; I don't have  
19 to go into any detail on it.

20           And the -- the class certainly demonstrates there's  
21 common question; everybody has been subject to this issue of  
22 whether there has been this agreement, et cetera, amongst the  
23 defendants to artificially inflate these costs.

24           And the Court finds that there's adequate  
25 representation here, and that goes both to not only the

1 individual plaintiffs but specifically, and I think more  
2 importantly in this case, to the attorneys, and that the  
3 attorneys are well versed in the action and also in the  
4 procedural mountain in Rule 23 class action cases of this  
5 size and nature.

6 So the Court confirms the appointment of counsel,  
7 first of all, for the class, and I affirm the class, the  
8 settlement class in this action -- in these actions, and  
9 there's all different ones so I don't want to -- I'm not  
10 going to begin to state these classes, but the Court has  
11 reviewed the documents, and I find that the classes are well  
12 defined and the Court does confirm them.

13 That plan of allocation, as I said, I think is  
14 excellent. I'm interested in the specific targeting that  
15 that was -- that was done. I know there was some mention of  
16 that in some of the motions, and so I agree that those  
17 particular vehicles would get weighted more heavily than  
18 others.

19 So all in all, I approve the settlement as fair,  
20 reasonable and adequate.

21 Thank you, Counsel.

22 MR. SELTZER: Thank you very much, Your Honor.

23 Then the next item we have on the agenda is our fee  
24 application. Would you want to hear about that first or go  
25 to the GEICO question?

1                   THE COURT: I would like to do the GEICO question  
2 while we are at it right now for the judgment.

3                   MR. SELTZER: All right. And if I may, there was a  
4 filing by the settling defendants suggesting that the Court  
5 defer entry of the final judgments pending the outcome of  
6 resolution of issues that have been raised regarding the  
7 effectiveness and if effective, the scope of the claims that  
8 GEICO retains as an opt-out.

9                   We have been parties to discussions about that that  
10 began only this last Friday, so this is kind of a new issue  
11 that was raised for -- at least from the end-payors'  
12 perspective.

13                   THE COURT: Well, I received today the pleading --  
14 yes, the document from GEICO -- I mean, I just reviewed it  
15 today, so I don't recall right now when it was filed.

16                   MR. RUBIN: Your Honor, did you say you received  
17 something from GEICO as opposed to a notice from the  
18 defendants?

19                   MR. SELTZER: Because I have not seen something  
20 from GEICO. There was something from --

21                   THE COURT: Not GEICO. Let me find it. It was  
22 just the notice of outstanding issues, that's all.

23                   MR. SELTZER: Right.

24                   MR. RUBIN: We just wanted the Court to know the  
25 defendants did have an issue with respect to GEICO's opt out

1 and the effect. We are in the process of meeting and  
2 conferring, and I don't think it is ripe for the Court; I  
3 think the timing under the settlement agreement says sometime  
4 next week -- end of next week we would file something with  
5 the Court if we are not able to reach an agreement on it.

6 THE COURT: Okay.

7 MR. SELTZER: And, Your Honor, we have requested --  
8 actually the settling defendants requested and we've agreed  
9 to participate in the meet-and-confer process this Friday to  
10 discuss these issues and see if we can arrive at some  
11 resolution or process for going forward. And if it happens  
12 then, great, it may be a couple days after that, I'm not  
13 sure, because we haven't gotten confirmation from GEICO that  
14 that date works.

15 But in any event, I want to make it clear for the  
16 record that the end-payor plaintiffs reserve all of their  
17 rights with respect to their position about the timing of the  
18 entry of the judgments, when it should take place, regardless  
19 of how this objection issue is resolved. So just for the  
20 record, I want to make that observation.

21 MR. RUBIN: And for the Yamasha defendants and the  
22 others who joined in with the notice, we agree with class  
23 counsel that the orders with respect to final approval  
24 certainly should be entered. With respect to any rulings on  
25 the allocation plan and fees, all of that stuff can proceed

1 as the Court would otherwise do. It's only the final  
2 judgment that there's a question that we are going to confer  
3 with class counsel over as to whether to -- when and how the  
4 language should read in the final judgment itself. If that  
5 makes sense, Your Honor.

6 THE COURT: Well, you are going to submit a  
7 judgment.

8 MR. SELTZER: Actually judgments have been prepared  
9 that would be virtually identical to what was previously  
10 submitted with respect to the prior settlements, and we would  
11 ask that they be entered. But what the settling defendants  
12 said is they want to have a discussion first about this GEICO  
13 opt out, whether it's effective and what it means, before the  
14 Court acts to enter those judgments. And we told the  
15 settling defendants that we will discuss this issue with  
16 them, but we reserve all of our rights. If we have a  
17 disagreement, and they want to have a further deferral of the  
18 entry of judgment, we reserve the right to come to the Court  
19 and say, no, they should be entered now.

20 THE COURT: Okay. So you will do the order  
21 approving the settlement?

22 MR. SELTZER: Yes.

23 THE COURT: And then the judgment you are going to  
24 hold pending this resolution; is that correct?

25 MR. SELTZER: Yes, Your Honor, that's the idea.

1                   MR. RUBIN: Right, because the issue with the final  
2 judgment, Your Honor, if you recall from the last rounds, it  
3 has a paragraph in it that says identify the specific  
4 entities or persons who opted out and states that they timely  
5 and validly opted out and thus are not covered by the  
6 settlement. That can't be -- we don't believe that can be  
7 entered -- that language can be used until we address the  
8 issue of GEICO, but we are going to confer with class counsel  
9 over that and see if there's a way to do that interim or not.

10                  THE COURT: Okay. And then you are going to let us  
11 know or file something if there needs to be a hearing --

12                  MR. SELTZER: Yes.

13                  THE COURT: -- let's say in September. It's August  
14 so --

15                  MR. RUBIN: Yes, Your Honor. We will file  
16 something on or before August 13th.

17                  THE COURT: Okay.

18                  MR. SELTZER: And then we would advise the Court of  
19 whether we need a hearing if there is a dispute that needs to  
20 be resolved, and then we would ask that that takes place as  
21 soon as is convenient to the calendar of the Court.

22                  THE COURT: All right.

23                  MR. RUBIN: Okay. Thank you.

24                  THE COURT: Sounds like an agreement, and we will  
25 see what happens --

1                   MR. SELTZER: Right.

2                   THE COURT: -- after you negotiate. Okay.

3                   MR. SELTZER: Your Honor, just for the record, we  
4 think there's a way to resolve this question with the final  
5 judgments without necessarily having a final resolution of  
6 the GEICO opt out, but that's going to be part of our  
7 discussion.

8                   THE COURT: Right, later. Okay. So the attorney  
9 fee issue.

10                  MR. SELTZER: On the attorneys' fee application, as  
11 the Court knows, we've applied for attorneys' fees equal to  
12 25 percent of the round three settlements, net of the  
13 expenses. And as we previously said we would do, we have  
14 applied in each round for progressively lower percentages;  
15 the round two percentage was 27 and a half percent as Your  
16 Honor may recall, and then the round one was a bit higher  
17 than that.

18                  Let me just begin by saying that to achieve these  
19 really historic results, class counsel have had to devote an  
20 enormous amount of time and effort and money to these cases.  
21 Through March of this year more than 341,000 hours of time  
22 have been devoted by class counsel firms to this litigation.  
23 And unlike our opponents who are among the --

24                  THE COURT: For what period of time?

25                  MR. SELTZER: This is from the beginning of the

1 case through March of 2018, and the beginning of the case is  
2 the date that we were appointed as interim class counsel; the  
3 time before that is not included in that total.

4 And I was going to say that unlike our opponents,  
5 and our opponents are really among the finest antitrust  
6 lawyers in the land, our compensation is dependent entirely  
7 upon our obtaining recoveries for the class. We took the  
8 risk of litigation, and if we were unsuccessful, we wouldn't  
9 get paid. So we were on a contingency basis in this  
10 litigation.

11 And with respect to the percentage we are asking  
12 for, our papers lay out in detail why we believe our fee  
13 request is in line with other class action precedence, and  
14 it's also supported by a market test in terms of what private  
15 litigants pay their lawyers. For the class action context,  
16 we cited, for example, the Alapata vs. Exxon Corporation  
17 case, and that was a case in which a court awarded  
18 31.5 percent of a \$1.06 billion class settlement fund, and  
19 noted there were many other cases awarding -- and listing  
20 those cases, awarding fees between 25 percent and 35 percent  
21 of the funds.

22 In the LCDs class action case, which was also an  
23 indirect purchaser class action, the court there awarded  
24 28.6 percent of the \$1.08 billion settlement fund, which is  
25 comparable to where we are at with the brand new settlements

1      that are not part of round three, but we are going to  
2      increase that amount based on agreements we have reached in  
3      principle with other defendants that are not yet public. And  
4      that 28.6 percent is higher than the 25 percent that, of  
5      course, we are asking for now. The market also supports our  
6      application.

7                   I might tell Your Honor again, speaking just for  
8      myself and my firm, we are hired a lot to represent private  
9      plaintiffs in nonclass action cases on a contingency basis.  
10     We are also hired to represent companies on an hourly basis  
11     or on a fixed fee basis or any number of different ways. Our  
12     standard customary percentage arrangement with a client, and  
13     it's all subject to negotiation so in a sense there is no  
14     standard, but the starting point we start from is if we are  
15     paying the expenses, then the contingency percentages are 40,  
16     45 percent and 50 percent depending upon the point in time  
17     when the case is resolved, and many very, very sophisticated  
18     companies have agreed to those terms of our representation.

19                   In other cases private plaintiffs have also agreed  
20     to similar kinds of percentages that we are requesting here.  
21     For example, there was a case involving the National Credit  
22     Union Administration that was brought on behalf of failed  
23     federal credit unions against various banks involving the  
24     mortgage-backed security fiasco that was involved in the  
25     great recession we just went through. There the NCUA, which

1      is a governmental entity, agreed to a 25 percent fee with its  
2      lawyers, and they were paid a little more than a billion  
3      dollars in fees for recovery of about 4.3 billion on behalf  
4      of the NCUA.

5              So the private market is one that is looked to as a  
6      guidepost by courts in determining whether a fee request is  
7      fair or reasonable, and examples like the ones I gave can be  
8      multiplied and they appear in our papers.

9              So we think that the percent is a fair, reasonable  
10     percentage based upon those benchmarks. And, of course, this  
11     litigation has been exceptionally complicated. This may be  
12     the most complicated set of class actions -- antitrust class  
13     actions ever prosecuted.

14              Now, there's another metric that the courts look to  
15     in looking at the fairness or reasonableness of the fee  
16     request, and that's the lodestar multiplier cross-check. It  
17     is not required, but courts often engage in it to test the  
18     reasonableness of the percentage amount. Here the total  
19     lodestar that has been incurred by the class counsel is  
20     \$140,283,627, again, as of March of this year. The  
21     multiplier that would be applied if we were granted a  
22     25 percent request against all of the awards that the Court  
23     has previously made, the two interim awards of 20 percent  
24     from the round one and round two settlements, together with  
25     the 25 percent we're asking for out of the round three

1      settlements, would yield a multiplier of 1.63 times class  
2      counsels' time. That is on the lower side of many cases.

3              For example, the LCDs case, which I cited, where  
4      the court awarded 28.6 percent of the settlement funds, the  
5      multiplier there for lead counsel and liaison counsel range  
6      between 3.24 and 4.24 times their time.

7              THE COURT: What numbers did you use to get this  
8      multiplier because I divided and I didn't come up with this  
9      1.63?

10             MR. SELTZER: Well, we added up all of the awards  
11     the Court has previously made, plus the 25 percent we are  
12     asking for from this round three of settlements, to come up  
13     with the total amount of the fees, which would be the one  
14     part of the ratio as against -- as against the --

15             THE COURT: You used all of the settlements?

16             MR. SELTZER: -- the lodestar, the lodestar, using  
17     all of the -- all the time, and again that's consistent with  
18     what other courts have done and what this Court said was  
19     appropriate for the round two, which is -- this was like one  
20     common effort, you know, the work that we did with respect to  
21     one part of the case assisted in another part, and it is  
22     really impossible to bifurcate the work, you know --

23             THE COURT: I agree, but I question why 25 percent  
24     for round three versus 20 for round one and round two?

25             MR. SELTZER: Well, the reason why we asked for

1      that is, first of all, that's what we said we were going to  
2      do when we originally --

3                    THE COURT: Pardon me?

4                    MR. SELTZER: That's what we said we were going to  
5      do when we responded to Your Honor's request for briefing on  
6      this issue a couple years ago.

7                    THE COURT: Right.

8                    MR. SELTZER: But the 20 percent awards, the Court  
9      expressly made those interim. In other words, the Court  
10     reserved judgment on whether --

11                  THE COURT: Correct.

12                  MR. SELTZER: -- to award more money out of those  
13     settlements at the end of the cases. So we are asking for  
14     the 25 percent out of this round because we are getting close  
15     to the end of the case, we are not there yet, but that was  
16     the reason for doing that at this time.

17                  I mean, we could do the -- if the Court were  
18     inclined, the Court could follow what was done previously and  
19     award 20 percent on an interim basis, but we think the  
20     25 percent is fully justified on the facts of the cases as  
21     they now sit.

22                  And as I was going to say with the LCDs case on  
23     multipliers there, there they were at the end of the case  
24     pretty much, the overall multipliers for all of lawyers --  
25     all the plaintiffs' counsel was between 2.4 and 2.6, much

1      higher than the 1.63 that we are asking for here.

2           So, again, if you look at the multipliers that have  
3      been used as crosschecks in other cases, we think the  
4      25 percent is an eminently reasonable amount from these  
5      settlements, and then, of course, we will have the round four  
6      settlements, and there will be a further application with  
7      respect to them. So that's the basis of the application.

8           And we also have a request for reimbursements of  
9      expenses of about \$500,000, and we are also using the  
10     litigation fund/cost fund the Court established in the first  
11     round to pay expenses mainly of experts, document-hosting  
12     charges, and all of that. That's all laid out in the  
13     declaration of Mr. Zapala, whose firm acts as the treasurer,  
14     so to speak, of the litigation fund in this case. And that  
15     is not part of any application at this point; we are just  
16     using those funds for those purposes, but those are basically  
17     third-party expenses from experts and other third-party  
18     vendors we deal with for the common effort in the litigation.

19           So that's our application, Your Honor. I'm happy  
20     to answer any questions that you may have about it.

21           THE COURT: Well, I will always have difficulty  
22     with the attorney fees, not to underestimate them and not to  
23     overestimate particularly with the end payors because I  
24     see -- I'm anticipating a large number of claimants at the  
25     end, so we want the pot to be as large as can be.

1           But in listening to you now and in applying the  
2 factors and looking at round one and round two at 20 percent,  
3 I think the average -- and I recalculated this, and I think  
4 you had it in your papers, it was like -- it would come to  
5 like 22 percent.

6           MR. SELTZER: Yes, Your Honor. If this application  
7 were granted, then if you combine all of the prior awards and  
8 use that as a percentage of the settlements achieved to date,  
9 including round three, it would be about 22 percent.

10           THE COURT: Okay. And the Court knows that it has  
11 to consider a number of factors, though there is no set way  
12 of doing this. Certainly lodestar you start with lodestar,  
13 and we did that here as you indicated, and I think I  
14 calculated out there must have been a blended average of  
15 about \$410 an hour, which I think is fair given the work  
16 involved in this particular case. And certainly there's a  
17 great benefit to the end payors for the work that's done in  
18 this case because they wouldn't have individually filed, they  
19 probably don't know, and most people maybe still don't know  
20 that they were harmed by this antitrust. And that your  
21 services were taken on a contingency fee basis with great  
22 costs here, and while I am at costs, I will award the costs  
23 that have been submitted which the Court has reviewed, it's a  
24 little over 500,000 --

25           MR. SELTZER: I think it is about \$508,000,

1 something like that.

2 THE COURT: The Court will award that exact amount.  
3 And I think the most important factor here is the  
4 professional skill of the attorneys. And I also have gone  
5 through different cases and reread what we did before on  
6 attorney fees. And I think that a determination -- I don't  
7 think there is anything magic about 25 percent, I don't think  
8 there's anything magic about 30 percent, I know where all of  
9 that started from. And certainly when we get to figures of  
10 over a billion dollars, we know that there's a substantial  
11 attorney fee that's going to be involved there regardless of  
12 the percentage.

13 So considering all of these factors, and I would  
14 say the primary factor here to me is the skill of counsel,  
15 but I do offset that by what is a reasonable -- a fair and  
16 reasonable fee. I mean, we can go up and it just becomes not  
17 reasonable, the numbers are just too high. But the Court  
18 looked also at the multiplier and I look at that lodestar,  
19 and I -- to be perfectly blunt, I don't find that as helpful.  
20 Yes, it gives some kind of a measure, but when you are in a  
21 case like this with 341,000 hours, we know that there's time  
22 in there that actually has not been spent, not because of  
23 dishonesty of lawyers, I'm not speaking of that at all, but  
24 you round up, maybe you round down sometimes, I don't know,  
25 but it's -- we know that there's -- it's just hard to keep

1 accurate time.

2 So I think the percentage method really is the only  
3 method, and I give little weight to the lodestar though the  
4 Court has gone over it and calculated it. I did it a little  
5 differently than you did considering just the settlement, but  
6 I think that -- I think what's fair is probably somewhere  
7 between the 20 and 25 percent, and I think you struck it when  
8 you said 22 and I did that, and I think that that's probably  
9 a fair resolution in a case with over a billion dollar  
10 recovery.

11 So I'm going to grant the 25 percent, which would  
12 equal roughly 22 -- it's 22 point-something, and I want you  
13 to stick with that for your round four. I'm telling you that  
14 now. I think that that would be a fair resolution for an  
15 adequate and well deserved attorney fee.

16 MR. SELTZER: Very well, Your Honor.

17 THE COURT: Thank you. Okay. Anything else?

18 MR. RUBIN: Nothing else, Your Honor.

19 THE COURT: All right. Please present the orders.  
20 Does anybody else have anything to --

21 (No response.)

22 THE COURT: All right. Thank you for coming into  
23 my new quarters for today. Next month it will be somewhere  
24 different, so make sure you check where you are going.

25 MR. SELTZER: Very well, Your Honor. We will

1 submit proposed form of order on the settlements and the plan  
2 of allocution and the attorneys' fee award.

3 THE COURT: Thank you.

4 MR. SELTZER: Thank you, Your Honor.

5 MR. RUBIN: Thank you very much, Your Honor.

6 THE LAW CLERK: All rise. Court is in recess.

7 (Proceedings concluded at 11:01 a.m.)

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## CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION, Case No. 12-02311, on Wednesday, August 1, 2018.

s/Robert L. Smith  
Robert L. Smith, CSR 5098  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: 08/10/2018

Detroit, Michigan